



**STATE OF ILLINOIS  
UMAN RIGHTS COMMISSION**

IN THE MATTER OF:	)	
	)	
MARDEL LOPEZ,	)	
	)	
Complainant,	)	
	)	Charge No.: 1997CF2130
and	)	EEOC No.: 21B971534
	)	ALS No.: 10346
MARTIN TITLE COMPANY,	)	
	)	
	)	
Respondent.	)	

**RECOMMENDED ORDER AND DECISION**

On February 4, 1998, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Merna Miller. That complaint alleged that Respondent, Martin Title Company, sexually harassed Complainant.

On December 20, 2000, Respondent's attorneys were given leave to withdraw. No other attorney ever entered an appearance on Respondent's behalf, and Respondent took no further actions to defend itself. As a result, on March 28, 2001, Respondent was found to be in default.

A hearing on damages was held on June 19, 2001 in Dixon, Illinois. Although notice of that hearing was sent to Respondent's last known address, Respondent did not appear at the hearing.

Subsequently, Complainant filed a written motion for

attorney's fees. That motion was served upon Respondent, but no response to the motion was filed and the time for filing such a response has passed. The matter is now ready for decision.

#### FINDINGS OF FACT

The following facts were taken from the complaint in this matter, the allegations of which are deemed to be admitted, and from the preponderance of the evidence at the damages hearing held in this matter.

1. Respondent, Martin Title Company, hired Complainant, Mardelle Lopez, on November 3, 1982.
2. Complainant's position with Respondent was Data Entry Clerk.
3. George Martin owned Respondent and ran the business.
4. On June 24, 1996, Martin made an unsuccessful attempt to grab Complainant's breasts.
5. Martin routinely referred to Complainant's breasts as "play toys."
6. On August 19 and November 12, 1996, Martin kissed Complainant on the lips.
7. Martin frequently adjusted his genitals in Complainant's presence, sometimes while making sexually suggestive remarks.
8. In Complainant's presence, Martin often referred to female workers as "bitches" and "whores."
9. When Complainant objected to Martin's inappropriate

behavior, he would remind her that she was raising five children and that she needed the job.

10. Martin never altered his behavior in response to Complainant's requests.

11. Complainant was embarrassed by Martin's behavior and grew to fear him.

12. Complainant should be compensated in the amount of \$15,000.00 for the emotional distress caused by Respondent's actions.

13. Complainant is seeking compensation for the work of attorney Michael J. McCarthy at the rate of \$150.00 per hour for 18.7 hours.

14. The requested hourly rate and the requested number of hours are reasonable under these circumstances and should be accepted.

#### CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5.1-101 *et seq.* (hereinafter "the Act").

2. Respondent is an "employer" as defined by section 2-101(B)(1)(b) of the Act and is subject to the provisions of the Act.

3. Because it was found to be in default, Respondent has admitted the allegations of the complaint.

4. Because of its failure to file an objection to

Complainant's request for attorney's fees, Respondent has waived its right to object to such fees.

#### DISCUSSION

Respondent initially appeared and began to mount a defense, but its attorneys were given leave to withdraw in December of 2000. No other attorney ever entered an appearance on Respondent's behalf, and the company took no further actions to defend itself. Therefore, on March 28, 2001, Respondent was found to be in default.

As a result of the default order, Respondent is deemed to have admitted the allegations of the complaint. ***Bielecki and Illinois Family Planning Council***, 40 Ill. HRC Rep. 109 (1988). Accordingly, a finding of liability against Respondent is appropriate. A basic overview of the facts is needed, though, to allow a meaningful discussion of the appropriate damages.

Respondent, Martin Title Company, hired Complainant, Mardelle Lopez, on November 3, 1982. Complainant's position with Respondent was Data Entry Clerk. George Martin owned Respondent and ran the business.

Throughout Complainant's tenure with Respondent, Martin engaged in a pattern of inappropriate behavior. Some of his actions were isolated incidents for which Complainant could provide exact dates. Some of his other actions were so frequent that they happened virtually daily.

For example, Martin routinely referred to Complainant's

breasts as "play toys." On June 24, 1996, he made an unsuccessful attempt to grab her breasts. On August 19 and November 12, 1996, he kissed her on the lips. Martin frequently adjusted his genitals in Complainant's presence, sometimes while making sexually suggestive remarks. In her presence, he often referred to female workers as "bitches" and "whores."

Martin's behavior was unwelcome, but when Complainant objected to his inappropriate behavior, he would remind her that she was raising five children and that she needed the job. He never altered his behavior in response to her requests.

That summary of Martin's behavior is not comprehensive, but it is representative of his behavior during the time he and Complainant worked together. It should provide a basic background for a determination of damages.

There was no evidence of lasting physical or psychological injury, but Complainant was embarrassed by Martin's behavior and grew to fear him. That embarrassment and fear, especially over a long period of time, justifies an award of damages for emotional distress.

The Commission awarded \$12,000.00 in emotional distress damages on similar facts in *York and Al-Par Liquors*, \_\_\_ Ill. HRC Rep. \_\_\_, (1986CF0627, June 29, 1995). The complainant in *York* was a cashier in a convenience store. She was harassed on a daily basis by the store manager, who grabbed and touched her.

The complainant in *York* was harassed for about nine months.

Complainant in the instant case was harassed for a period of years. Moreover, the **York** decision is several years old and inflation alone would justify a higher award.

On the basis of the evidence in the record, Complainant should be compensated in the amount of \$15,000.00 for the emotional distress caused by Respondent's actions. That amount should be sufficient to compensate her for the damages she described.

There is information in the record, which indicates that Respondent is no longer doing business. Nevertheless, there are two types of relief which were not specifically requested, but which are appropriate. First, Respondent should be ordered to clear its records of any reference to this action or to the underlying charge of discrimination. Next, Respondent should be ordered to cease and desist from further sexual harassment.

Finally, there is the issue of attorney's fees. In an order entered on August 28, 2001, Complainant was given leave to file a motion for fees. She filed such a motion and served it upon Respondent. The August 28 order provided that Respondent could file a written response to the motion within 21 days of the service of the motion. The order specifically stated that failure to file a response to the motion "will be taken as evidence that Respondent does not contest the amount of such fees." Although more than 21 days have passed since Complainant filed her motion for fees, Respondent has not filed any response.

As a result, Respondent has waived the issue of attorney's fees. **Mazzamuro and Titan Security, Ltd.**, \_\_\_ Ill. HRC Rep. \_\_\_, (1989CN3464, October 21, 1991). Even without that waiver, though, it would be recommended that Complainant receive the fees she has requested.

Complainant requested compensation for 18.7 hours at \$150.00 per hour. The support for the hourly rate is virtually nonexistent, but the requested rate is quite reasonable in this forum, and it is recommended that the rate be accepted. The number of requested hours is documented and reasonable under these circumstances. The total recommended fee award is \$2,805.00. That amount should be fully compensatory.

#### RECOMMENDATION

Based upon the foregoing, it is recommended that the complaint in this matter be sustained in its entirety and that an order be entered awarding the following relief:

A. That Respondent pay to Complainant the sum of \$15,000.00 for the emotional distress suffered by Complainant as the result of Respondent's actions;

B. That Respondent pay to Complainant the sum of \$2,805.00 for attorney's fees reasonably incurred in the prosecution of this matter;

C. That Respondent clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;

D. That Respondent cease and desist from further acts of sexual harassment.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL J. EVANS  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: May 20, 2002